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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-866

	Opinion Delivered JANUARY 27, 2010
LARRY WAYNE SAXTON APPELLANT	APPEAL FROM THE PRAIRIE COUNTY CIRCUIT COURT, SOUTHERN DIVISION, [NO. CR-2008-12]
V.	
STATE OF ARKANSAS APPELLEE	HONORABLE THOMAS M. HUGHES III, JUDGE
	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Larry Wayne Saxton appeals his convictions for residential burglary, attempted theft of property, and third-degree battery, as found by the judge in a bench trial conducted in Prairie County Circuit Court. The charges arose out of allegations that appellant was the man who broke into Debra Williams's home in DeValls Bluff, Arkansas, on April 25, 2008, and shoved her down as he fled the house. Ms. Williams positively identified appellant in a photographic lineup presented to her by local police, and she did so again during her testimony at the bench trial. Appellant did not challenge the elements of the offenses. Rather, his defense was focused on the notion that the victim was mistaken or misled to identify him as the culprit. The trial judge denied appellant's two motions to

dismiss and entered a judgment of conviction. A timely notice of appeal followed. Appellant argues on appeal that "the trial court erred when it denied appellant's motion to dismiss based on a suggestive photo lineup." Appellant asks that because of this error, our court should reverse and dismiss the convictions. We disagree and affirm.

As best we can discern, appellant is challenging the sufficiency of the evidence to sustain the convictions. We review a challenge to the sufficiency of the evidence by reviewing all of the evidence introduced at trial, even evidence erroneously admitted, in the light most favorable to the State, to determine whether there is substantial evidence to support the verdict. *Camacho-Mendoza v. State*, 2009 Ark. App. 597. We defer to the trial court on matters of credibility. *Mosely v. State*, 87 Ark. App. 127, 189 S.W.3d 456 (2004). One eyewitness's testimony is sufficient to sustain a conviction, even if not corroborated. *Id.*

Here, Ms. Williams explained that she came home midday, saw that her door had been pried open, and observed jewelry boxes, guns, and other items stacked up around her house. Williams telephoned 911, thinking that the burglar was gone, but a man was hiding in her bathroom. The man came out, she was face-to-face with him for a few seconds, and he shoved her down as he ran from her home. She suffered bruising to her chest and back. Ms. Williams testified that she focused on his facial features and was certain that appellant was that man. She said the police showed her photographic lineups three times, and each time,

she identified appellant.

Appellant moved for a dismissal stating that the photo lineups were unduly suggestive because appellant's was the only photo in all three presentations. His attorney concluded, "I'm asking that all of the testimony concerning the lineups be suppressed and that because the lineups were suggestive, I'm asking for a dismissal." After the trial court denied the motions, appellant and his aunt testified that appellant was at the aunt's house in Biscoe, Arkansas, during the relevant time. Thereafter, appellant's attorney renewed the motion to dismiss, which was denied.

As for the sufficiency of the evidence, we have reviewed the evidence under the proper standards and affirm. Appellant questions the believability of the victim, and that function is left solely to the fact-finder, not our court on appeal.

To the extent that appellant attempts to argue that the trial court erred by failing to suppress the evidence related to the photographic lineup, we do not review it because it is not preserved for our review. A motion to suppress is made too late when raised for the first time in conjunction with a motion to dismiss. *Camacho-Mendoza*, *supra*. There was no pre-trial motion to suppress filed, nor was there any request by defense counsel that the trial court consider suppressing the evidence as it was being presented in the State's case-in-chief. Thus, we do not consider any evidentiary ruling to be properly before us on appeal.

For the foregoing reasons, appellant's conviction is affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.